IN THE MISSOURI COURT OF APPEALS WESTERN DISTRICT

COMPLETE STYLE OF THE CASE:

JAMES SULLIVAN,

Appellant,

٧.

DIVISION OF EMPLOYMENT SECURITY,

Respondent.

DOCKET NUMBER WD74763 MISSOURI COURT OF APPEALS WESTERN DISTRICT

Date: November 27, 2012

Appeal from:

Labor and Industrial Relations Commission

Appellate Judges:

Division Two: Lisa White Hardwick, Presiding Judge, James M. Smart, Jr. and Karen King Mitchell, Judges

Attorneys:

James Sullivan, Belleville, IL, Appellant, *pro se*. Shelly A. Kintzel, Jefferson City, MO, for Respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY COURT OF APPEALS -- WESTERN DISTRICT

JAMES SULLIVAN,

Appellant,

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DIVISION OF EMPLOYMENT SECURITY,

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WD74763

Labor and Industrial Relations Commission

Before Division Two: Lisa White Hardwick, Presiding Judge, James M. Smart, Jr. and Karen King Mitchell, Judges

When the Division of Employment Security's Appeals Tribunal determined that James Sullivan was disqualified from receiving unemployment benefits because his employer, Landry's Seafood House, discharged him for misconduct, Sullivan appealed to the Labor and Industrial Relations Commission. The Commission denied his application for review. On appeal, Sullivan contends that the decision to deny him unemployment benefits was not supported by competent and substantial evidence.

AFFIRMED.

Division Two holds:

(1) Because the Commission denied Sullivan's application for review, the Appeals Tribunal's decision is deemed to be the Commission's decision for purposes of judicial review pursuant to Section 288.200.1, RSMo 2000, and our review is in the same manner provided for decisions of the Commission.

(2) Competent and substantial evidence supports the Appeals Tribunal's determination that Sullivan was discharged for misconduct connected with work and, therefore, was disqualified from receiving unemployment benefits. The undisputed facts show that Sullivan's taking an unauthorized smoke break while on the clock was a willful violation of Landry's Seafood House's known and reasonable work rule.

Opinion by: Lisa White Hardwick, Presiding Judge November 27, 2012

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